

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

GARNETT LYNN WILLIAMS,

Appellant.

No. 38099-4-II

UNPUBLISHED OPINION

Houghton, J. — Garnett Williams appeals his convictions of first degree assault and first degree unlawful firearm possession, arguing that the trial court denied him his constitutional right to confront a witness. He also argues that the trial court improperly calculated his offender score and, thus, erred in sentencing him. Pro se, he raises ineffective assistance of counsel claims. We affirm his conviction but vacate his sentence and remand for resentencing.

**FACTS<sup>1</sup>**

On May 7, 2008, John Hall visited several people at the Woodmark Apartments in Tacoma. On this day, Hall visited the residence of an acquaintance he knew only as “Pops.” 2 Report of Proceedings (RP) at 31. At trial, Hall identified Williams as “Pops” and said that he had casually met Williams on two prior occasions.

Williams was not home when Hall met in his apartment with two other acquaintances, Dametra Bolar and another woman known as LaShanda. At some point, Williams arrived at the

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<sup>1</sup> We set forth facts from the evidence adduced at trial.

apartment with his father and asked Hall and Bolar to leave and they did.

After Hall left Williams' apartment, someone approached him and said that Williams and another person were arguing about him. Hall sought out Williams, who was still embroiled in an argument, and stood "face to face" with Williams and told him to "keep me out of it." 2 RP at 35, 37. Hall then saw Williams turn around.

Hall testified to the following at trial. As he turned and began to walk about 10 feet away, he heard and felt two gun shots strike his back. He fell to the ground. As he lay on his side, he saw Williams standing over him and pointing a gun at him. Hall raised his hand to shield his face and Williams shot him in the hand. Hall said that Williams wore a hooded sweatshirt with the hood pulled over his head.

A Pierce County sheriff's deputy worked at Woodmark Apartments as a security guard. On patrol, he saw several people standing near an apartment doorway. He heard gunshots as he passed by. He exited his vehicle and immediately called for backup. One woman, later identified as Rondala Mathis, ran toward the deputy and yelled that "Pops" had shot her boyfriend. The deputy saw a man in a black hooded sweatshirt walking toward the parking lot.<sup>2</sup> Williams ran into his apartment when he saw the deputy. The deputy did not pursue Williams but instead attended to Hall.

Police officers responded and apprehended Williams a few blocks away. Pursuant to a search warrant, police searched Williams' father's apartment and found a black hooded sweatshirt on a living room chair along with a handgun and a box of ammunition hidden in the couch.

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<sup>2</sup> At trial, the deputy identified the Williams as the individual.

On May 8, 2008, the State charged Williams with one count of first degree assault and one count of first degree unlawful possession of a firearm. On June 25, the trial court held a hearing on whether to continue Williams' trial. Williams, who attended the hearing, stated through his defense counsel that he did not want to waive his right to a speedy trial and therefore declined to continue his trial beyond its scheduled July 2, 2008 date. The trial court confirmed this by asking Williams directly if he wished to go to trial in a week. He stated that he did. He also stated that he wished to waive his right to a jury trial. The trial court said that it would not accept a waiver until Williams had more time to discuss it with counsel.

The matter proceeded as scheduled on July 2. Before trial started, defense counsel stated that he "repeatedly informed" Williams that continuing the case would be in Williams' best interest. 1 RP at 6. Given the nature of the charges against Williams, defense counsel advised Williams to allow him more time to prepare. Defense counsel also stated that he and Williams discussed the nature and implications of waiving a jury trial. Despite defense counsel's advice, Williams wanted a bench trial and did not want a continuance. The trial started thereafter.

At trial, Hall identified Williams in the courtroom but testified that he knew Williams only as "Pops," not by his given name. The next day, a police officer that responded to the shooting testified that he had taped an interview with Hall in which Hall stated he did not know his assailant's name. Hall testified that he had not seen Williams with a gun before Williams shot him. He also stated in his prior police interview that he walked away because he noticed Williams searching his pocket. Specifically, Hall said, "'Yeah, I seen him fumbling in his pocket.'" 4 RP at 245.

The trial court called Hall back to the stand. Upon direct examination, Hall did not deny making the statement to the police officer but explained that he did not believe his testimony to be inconsistent. Hall explained that he did not know Williams by name, but by his nickname, “Pops.” Hall also said that he saw Williams fumbling in his pocket when he walked away and did not actually see the gun until after Williams shot him.

The trial court found Williams guilty of both charges. It found that he had previously been convicted of certain violent crimes when it calculated his offender score. He appeals.

## ANALYSIS

### Right to Confrontation

Williams first contends that the trial court violated his constitutional right to confrontation by “severely curtailing” his cross examination of Hall. Appellant’s Br. at 9. More specifically, he claims that the trial court erred by sustaining the State’s objection to two of his questions to Hall.

The United States and Washington constitutions guarantee defendants the right to confront and cross-examine an adverse witness. U.S. Const. amend. VI; Wash. Const. art. I, § 22; *State v. McDaniel*, 83 Wn. App. 179, 185, 920 P.2d 1218 (1996). The trial court exercises its discretion in determining the scope of cross-examination. *State v. Dixon*, 159 Wn.2d 65, 75, 147 P.3d 991 (2006). We reverse only if the trial court abuses this discretion; it does so when it bases its decision on untenable or unreasonable grounds. *Dixon*, 159 Wn.2d at 75-76. The trial court may deny cross-examination where the evidence sought is vague, argumentative, or speculative. *State v. Darden*, 145 Wn.2d 612, 620-21, 41 P.3d 1189 (2002).

Williams argues that the trial court abused its discretion in two instances. First, the State

objected when Williams asked Hall why he originally said that he did not know his assailant's name when he testified at trial that he knew Williams as "Pops." The State objected on the ground that defense counsel had asked Hall this question several times when Hall first testified. Because any response would therefore be cumulative, the trial court sustained the objection.

Second, the State objected to Williams' line of questioning as to what Hall meant by, "Yeah, I seen him fumbling in his pocket," asking repeatedly whether he actually saw the gun or not and what he meant by using the word "yeah." 4 RP at 245. Hall repeatedly testified that he did not see the gun. The State objected, noting that "yeah" is clearly an answer in the affirmative. Williams informed the trial court that he did not believe the term "yeah" necessarily denoted an affirmative answer. The trial court sustained the objection.

On appeal, Williams claims that his purpose was "[c]learly" intended to "prove that Hall's testimony lacked credibility because of prior inconsistent and contradictory statements made to [the deputy]." Appellant's Br. at 12. Moreover, Williams also had ample opportunity to illicit such testimony but was unsuccessful. The goal of the repeated questions was therefore "vague, argumentative, or speculative." *Darden*, 145 Wn.2d 621. The trial court did not abuse its discretion in sustaining both objections and Williams' argument fails.

#### Offender Score

Next, Williams contends that the trial court miscalculated his offender score when sentencing him on the first degree assault conviction. The State concedes error and we agree.

The trial court sentenced Williams with a 9+ offender score on the first degree assault conviction. The trial court calculated these scores based on the criminal history before it that

showed the State had previously convicted him for five counts of robbery and one count of unlawful possession of a controlled substance.

The State concedes the record before the trial court contained an error. Although Williams had convictions of five robbery counts, we had reversed three of those convictions and remanded for a new trial. *State v. Williams*, 104 Wn. App. 516, 17 P.3d 648 (2001). According to a 2001 warrant of commitment, he pleaded guilty to one count of robbery after remand. In its brief, the State explains that it dropped the other two charges in exchange for this plea. Because of the incorrect criminal history record before it, the trial court miscalculated Williams' offender score. The remedy is to vacate the sentence and remand for recalculation of the offender score and resentencing.

#### Statement of Additional Grounds

Williams raises ineffective assistance of counsel claims in his statement of additional grounds.<sup>3</sup> He argues that his counsel failed to inform the court that he had little time to prepare for trial. He also argues that his counsel failed to file any motions in limine or depose any witnesses.

An ineffective assistance of counsel claim requires a showing of deficient performance with resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Legitimate trial tactics and strategy form no basis for an ineffective assistance of counsel claim. *State v. Hendrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996).

Here, defense counsel told the court that he had little time to prepare for trial but that

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<sup>3</sup> RAP 10.10(a).

Williams refused to waive his speedy trial rights and seek a continuance. Williams fails to explain, nor can we see, how this constitutes deficient performance and we decline to review it further.

Williams' claims that his counsel failed to file any motions in limine or depose any witnesses comprise matters of trial tactics and cannot form a basis for an ineffective assistance claim.

Williams' ineffective assistance of counsel claim fails.

We affirm the convictions but vacate the sentence and remand for resentencing.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Houghton, J.

We concur:

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Bridgewater, J.

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Van Deren, C.J.